

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES A. BROWN,

Petitioner,

v.

STEVE SINCLAIR,

Respondent.

No. C10-5287BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 30) and Petitioner James A. Brown's ("Brown") second amended petition for writ of habeas corpus pursuant to 28 U.S.C. 2254 (Dkt. 32). The Court has considered the Report and Recommendation, Brown's amended petition, and the remaining record, and hereby adopts the Report and Recommendation for the reasons stated herein.


On May 12, 2010, Brown filed his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his state court conviction for one count of felony driving while under the influence and one count of driving while his license was revoked or suspended. Dkt. 6; *see* Dkt. 27, Exh. 1. On October 5, 2010, the Magistrate Judge issued a Report and Recommendation. (Dkt. 30). The Magistrate Judge found that Brown's petition contained both exhausted and unexhausted claims and that he either needed to dismiss his petition and

1 return to state court to exhaust his claims or file an amended petition that included only the
2 exhausted first sub-claim of his ineffective assistance of counsel claim. *Id.* at 9. The
3 Magistrate Judge also recommended that if Brown took no action then the Court should
4 dismiss the entire petition without prejudice. *Id.* Brown did not file objections to the Report
5 and Recommendation but he did file an amended petition. Dkt. 32. However, Brown's
6 amended petition contains all four of his sub-claims of his ineffective assistance of counsel
7 claim and fails to address the Magistrate Judge's finding that all but one of these sub-claims
8 is unexhausted. *See id.* at 5. The Court concludes that Brown has not effectively objected to
9 the Report and Recommendation. *See Howard v. Secretary of Health and Human Services*,
10 932 F.2d 505, 509 (6th Cir. 1991) (stating that a general objection to the entirety of a
11 magistrate's report, without specifying a single issue of contention, "has the same effects as
12 would a failure to object"). Moreover, the Court concludes that Brown has failed to cure the
13 deficiencies in his petition involving exhaustion as discussed in the Report and
14 Recommendation. Accordingly, the Court concludes that Brown's petition should be
15 dismissed without prejudice.

16 Therefore, it is hereby **ORDERED** that:

- 17 (1) The Report and Recommendation is **ADOPTED**; and
18 (2) Brown's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is
19 **DISMISSED without prejudice.**

20 DATED this 19th day of November, 2010.

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23 BENJAMIN H. SETTLE
24 United States District Judge
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